

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ABDALAH MOHAMED KHAMIS,	:	Civil No. 3:19-cv-902
	:	
Petitioner	:	(Judge Mariani)
	:	
v.	:	
	:	
WARDEN CRAIG A. LOWE,	:	
	:	
Respondent	:	

**MEMORANDUM**

On May 28, 2019, Petitioner Abdalah Mohamed Khamis ("Petitioner"), a native and citizen of Tanzania, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his detention by the United States Immigration and Customs Enforcement ("ICE"), and seeking a bond hearing or immediate release from immigration detention under 8 U.S.C. § 1226. (Doc. 1). At the time his petition was filed, Petitioner was detained at the Pike County Correctional Facility, Lords Valley, Pennsylvania. (*Id.*). Petitioner is currently housed at the Adams County Detention Center, Washington, Mississippi. (Doc. 14).

On January 30, 2020, Respondent filed a suggestion of mootness stating that Petitioner's detention status changed from pre-final order detention under 8 U.S.C. § 1226(a) to post-final order detention under 8 U.S.C. § 1231(a). (Doc. 15). Respondent argues that the habeas petition is therefore moot. (*Id.*). For the reasons set forth below, the Court will dismiss the habeas petition as moot.

## **I. Immigration Proceedings**

Petitioner is a native and citizen of Tanzania who was admitted to the United States on or about December 13, 1999, as a B1 non-immigrant visitor for business. (Doc. 1, p. 2; Doc. 7-2, Record of Deportable/ Inadmissible Alien, pp. 1-2). On October 1, 2009, Petitioner's status was adjusted to Lawful Permanent Resident. (Doc. 1, pp. 2, 10; Doc. 7-2, Record of Deportable/ Inadmissible Alien, pp. 1-2). On November 8, 2016, Petitioner was convicted of conspiracy to distribute heroin and sentenced to eighteen months confinement. (Doc. 1, p. 2; Doc. 7-2, Record of Deportable/ Inadmissible Alien, p. 2).

On April 6, 2018, ICE issued a Warrant of Arrest. (Doc. 7-2, Record of Deportable/ Inadmissible Alien, p. 2). On April 9, 2018, ICE issued a Notice to Appear charging Petitioner as removable pursuant to Sections 237(a)(2)(A)(iii) and (A)(2)(B)(i) of the Immigration and Nationality Act ("INA") due to his convictions for conspiracy and drug trafficking. (Doc. 7-3, Notice to Appear). Petitioner had his first master calendar hearing on May 1, 2018. (Doc. 1, p. 2; Doc. 7-4, Hearing Notice). On May 18, 2018, the United States Department of Homeland Security ("DHS") took Petitioner into custody. (Doc. 7-5, Notice of Custody Determination).

Petitioner applied for asylum, withholding of removal, and protection under the Convention Against Torture. (Doc. 1, p. 3; Doc. 7-6, Immigration Judge's Order). On October 30, 2018, a hearing was held on the merits of the application. (*Id.*). The

immigration judge ultimately denied Petitioner's application for asylum, withholding of removal, and protection under the Convention Against Torture, and ordered his removal. (*Id.*). Petitioner appealed the immigration judge's order. On April 23, 2019, the Board of Immigration Appeals ("BIA") dismissed the appeal. (Doc. 7-7, Board Decision). Thus, Petitioner's removal order became final. See 8 U.S.C. § 1101(a)(47)(B); 8 C.F.R. § 1241.1(a).

On May 10, 2019, Petitioner filed a petition for review with the Third Circuit Court of Appeals. See *Khamis v. Att'y Gen.*, No. 19-2075 (3d Cir.). On May 10, 2019, the Third Circuit Court of Appeals issued a temporary stay of removal pending its decision on the petition for review. (Doc. 7-8, *Khamis v. Att'y Gen.*, No. 19-2075 (3d Cir. May 10, 2019)). On November 7, 2019, the Third Circuit vacated the temporary stay and denied Petitioner's motion for a stay of removal. See *Khamis v. Att'y Gen.*, No. 19-2075 (3d Cir. Nov. 7, 2019)).

## **II. Discussion**

At the time Petitioner filed the instant habeas petition, he was pursuing an appeal of the BIA's April 23, 2019 decision, and seeking a stay of removal with the Third Circuit Court of Appeals. (Doc. 11-6). See *Khamis v. Att'y Gen.*, No. 19-2075 (3d Cir. May 10, 2019)). Pursuant to a standing practice order, the Third Circuit Court of Appeals granted a temporary stay of removal. *Khamis v. Att'y Gen.*, No. 19-2075 (3d Cir. 2019). On

November 7, 2019, the Third Circuit vacated the temporary stay and denied Petitioner's motion for a stay of removal. See *Khamis v. Att'y Gen.*, No. 19-2075 (3d Cir. Nov. 7, 2019)). The denial of the motion for a stay of removal shifted Petitioner's detention status from pre-final order detention under 8 U.S.C. § 1226(a) to post-final order detention under 8 U.S.C. § 1231(a), and triggered the start of the removal period on November 7, 2019. See *Leslie v. Att'y Gen.*, 678 F.3d 265, 270 (3d Cir. 2012).

While 8 U.S.C. § 1226 may have initially controlled Petitioner's detention, because the BIA dismissed Petitioner's appeal and because his motion for a stay of removal was ultimately denied by the Third Circuit, Petitioner is currently subject to a final order of removal and is therefore subject to detention pursuant to 8 U.S.C. § 1231. See 8 U.S.C. § 1231(a)(1)(B); *Leslie*, 678 F.3d at 268-70 (§ 1231 governs the detention of aliens subject to a final order of removal not subject to a stay of removal). As such, Petitioner's detention status changed from pre-final order detention to post-final order detention with the November 7, 2019 denial of his motion to stay by the Third Circuit. Therefore, Petitioner's claim pursuant to § 1226 is necessarily moot because he is now subject to a final order of removal.<sup>1</sup> See *Ufele v. Holder*, 473 F. App'x 144 (3d Cir. 2012) (finding that when the BIA's

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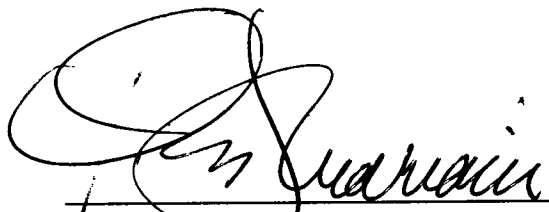
<sup>1</sup> Federal courts may adjudicate "only actual, ongoing cases or controversies." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990). To be an actual case or controversy, there must be injury that "is likely to be redressed by a favorable decision." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (quoting *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976)). The necessity of an actual case or controversy continues through all stages of the proceeding, including appeals. *Lewis*, 494 U.S. at 477-78.

order became administratively final, petitioner's detention switched from § 1226 to § 1231, thereby rendering moot his claim challenging the lawfulness of his detention under § 1226); *Rodney v. Mukasey*, 340 F. App'x 761, 764 (3d Cir. 2009) (finding that the change in the procedural posture of the case from pre-final order to post-final order mooted petitioner's challenge to pre-final order detention under section 1226(c) because "[t]he injury alleged, unreasonably long pre-final order of removal detention under 8 U.S.C. § 1226(c), can no longer be redressed by a favorable judicial decision"). Consequently, the habeas petition will be dismissed as moot, but without prejudice to Petitioner's right to file a new section 2241 petition challenging his post-final order detention under 8 U.S.C. § 1231.

### III. Conclusion

Based on the foregoing, the petition for writ of habeas corpus will be dismissed as moot. A separate Order shall issue.

Dated: January 20, 2020



Robert D. Mariani  
United States District Judge